

### **Response to Comment G17-2 (continued)**

full review and consideration of the environmental information, will the parties decide what action, if any, should be taken." Section 9.1(c) requires the parties to "conduct a thorough and legally sufficient environmental assessment of the project." Sections (e) and (f) authorize IID and SDCWA, to "terminate this Agreement," if either party determines not to adopt the alternatives or mitigation measures identified in the environmental analyses. Sections 10.1(a) and 10.2(a) state that the parties' authority to enter into the Agreement is subject to "compliance with environmental laws . . .", and Sections 10.1(c) and 10.2(c) expressly condition the enforceability of the Agreement on "compliance with environmental laws."

**IID Board Resolution.** The Board Resolution, by which IID authorized execution of the Agreement, further substantiates that IID complied with the requirements of CEQA. For example, Section 2 explains: ". . . because execution of the Agreement does not commit the IID to any course of action . . . execution of the Agreement does not require CEQA compliance and is exempt from CEQA pursuant to Section 15061 of the State CEQA Guidelines and applicable case law." Section 6 states: "That, by authorizing execution of the Agreement, the Board of Directors of IID is not committing itself to any activities described in the Agreement unless and until it determined that the requirements of CEQA have been fully satisfied."

**Notice of Exemption.** IID filed a Notice of Exemption on April 30, 1998 with respect to execution of the Agreement pursuant to CEQA Guidelines Section 15061(b), stating: "The execution of the Agreement is not a project defined in Section 15378 - execution of the Agreement does not commit the IID to any course of action with respect to the activities described therein, including a course of action that would result in approval of the activities set forth in the Agreement. The execution of the Agreement is only a preliminary decision that is essential to enabling the IID to prepare a legally adequate, focused and meaningful environmental assessment."

Pursuant to CEQA Guidelines Section 15112(c)(2), the time period for challenging the exemption expired 35 days after filing of the Notice of Exemption.

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**Response to Comment G17-3**

Please refer to the Master Response on *Other—Relationship Between the Proposed Project, QSA, IA, IOP, and CVWD Groundwater Management Plan* in Section 3 of this Final EIR/EIS.

**Response to Comment G17-4**

Please refer to the Master Response on *Other—Relationship Between the Proposed Project, QSA, IA, IOP, and CVWD Groundwater Management Plan* in Section 3 of this Final EIR/EIS.

**Response to Comment G17-5**

Please refer to the Master Response on *Other—Relationship Between the Proposed Project, QSA, IA, IOP, and CVWD Groundwater Management Plan* in Section 3 of this Final EIR/EIS.

G17-2

follow such a procedure would clearly invalidate the informed decision making purpose of CEQA. In addition, an agency must not embark upon a path which inevitably leads to project approval until it has completed the CEQA process. The reason for this requirement is that the EIR is not supposed to be an after-the-fact justification for a project that has already been decided upon by the decision makers. Unfortunately, that is what has occurred in this case. IID and SDCWA entered into the Water Transfer Agreement four years ago. Despite this agreement, we are being asked to assume that IID has no preconceived view regarding the proposed project but will wait until receiving an informed analysis of the environmental impacts. The fact that a water transfer agreement has been executed prior to completion of the EIR process is a clear violation of CEQA and raises significant questions regarding the level of consideration that IID or SDWCA will give to the IID EIR/EIS.

G17-3

2. The IID/SDCWA Transfer Agreement and the proposed QSA are inextricably related to the proposed project. The Secretary's proposed Draft IA implements the QSA. Page ES-5 states that a purpose of the proposed project is to meet the proponents' objectives and expectations for each agreement. Page ES-7 acknowledges the proposed project is a component of the IA, assuming full implementation of the QSA. Impacts of water use by CVWD are deferred to the Coachella Valley Water Management Plan PEIR. Impacts of change in point of diversion are deferred to the IA EIS and QSA PEIR. CEQA prohibits dividing a project into smaller segments and treating individual approvals as a separate project for the purposes of evaluating environmental impacts. Please explain your rationale for all the separate EIRs and why this is not a violation of CEQA.

G17-4

3. The draft QSA PEIR is a Program EIR to evaluate the environmental effects of implementing the QSA by a number of California water agencies and a number of related projects included in the QSA. To date, the QSA PEIR has not been certified and it appears the draft has not been circulated. Project-specific EIRs may tier off from previously certified program EIRs. However, the broader EIR should precede the more specific project EIR (*CEQA Guidelines 15152(a)*). "Tiering is appropriate when the sequence of analysis is from an EIR prepared for a... program to an EIR or negative declaration for another plan, policy, or program of lesser scope, or to a site-specific EIR or negative declaration. Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration." (Id.)

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4. Section 1.5.2 indicates that the IID EIR/EIS has relied upon information in the Draft QSA PEIR in assessing impacts of QSA activities, including the proposed project's

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Elston Grubaugh  
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second implementation scenario of transferring up to 200 KAFY to SDCWA and up to 100 KAFY to CVWD and/or MWD. The amount of this transfer affects the amount and type of water conservation and the impacts analysis throughout the IID EIR/EIS. Because the QSA PEIR has not been certified, the project and/or mitigation measures could change, dramatically altering the assumptions used for the IID EIR/EIS.

5. The proposed project evaluated in the IID EIR/EIS includes the potential use by MWD of up to 100 KAFY. Section 1.5.6 indicates that a project level assessment of MWD's receipt and use of this transferred water is evaluated in the Draft QSA PEIR. Additionally, impacts of water use by CVWD are deferred to the Coachella Valley Water Management Plan PEIR. Again, CEQA prohibits segmenting a project for the purposes of environmental evaluation.

6. Section 1.5.6 and elsewhere throughout the document indicates that the IID EIR/EIS relies upon the assessment developed in the Draft IA EIS. Sections 1.7.11 and 2.2.2 and other sections throughout the IID EIR/EIS attempt to incorporate the Draft IA EIS by reference. However, the introduction indicates that Reclamation is only now preparing a Draft EIS for the IA. A document which does not exist cannot be incorporated. We reiterate our concern that the IID EIR/EIS is relying upon information which is not final, segments the project, and is not easily available. Section 1.7.1.1 and Section 2.2.2 also repeatedly incorporate the Draft IA EIS by reference.

7. Please explain how IID will ensure achievement of the additional 20 KAFY per year in conserved water necessary for the gradually-accelerating diversion rate. Please indicate what assurances exist in the IID/SDCWA Transfer Agreement and/or the IA to divert only the amount of water equivalent to actual amounts conserved. Additionally, please indicate the potential that conserved water amounts might exceed the amount of water transferred if the anticipated transfer amounts are not actually purchased. Please evaluate the impacts related to greater than necessary conservation efforts and less-than estimated water transfer amounts.

8. Section 2.2.5.2 indicates that pursuant to the SDCWA/MWD Exchange Agreement, water transferred to SDCWA by the proposed project will be blended with SWP water and other MWD water sources to ensure no measurable change in water quality. Please address the impacts of such blending to MWD water recipients.

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#### **Response to Comment G17-6**

Please refer to the Master Response on *Other—Relationship Between the Proposed Project, QSA, IA, IOP, and CVWD Groundwater Management Plan* in Section 3 of this Final EIR/EIS.

#### **Response to Comment G17-7**

Please refer to the Master Response on *Other—Relationship Between the Proposed Project, QSA, IA, IOP, and CVWD Groundwater Management Plan* in Section 3 of this Final EIR/EIS.

#### **Response to Comment G17-8**

Reclamation is responsible for releasing water for use by Colorado River contractors in accordance with established rules, compacts, and laws cumulatively defined as The Law of the River. Article V. of the Decree of the Supreme Court of the United States in Arizona v. California dated March 9, 1964 requires Reclamation to account for the consumptive uses of all Lower Basin states and water users on an annual basis. Through these processes, IID's annual water diversion will be limited to its 3.1 MAF cap less all volumes of conserved water as outlined in the EIR/EIS. The IID/SDCWA Transfer Agreement is a 'take or pay' contract, thus SDCWA is expected to divert all flows conserved as a result of the Project. Conserved water not transferred within the context of this Project would remain in the Colorado River system and be available for use by lower priority water users within California. All ranges of conservation efforts related to this project are contained within the bookends of analysis described by this EIR/EIS. Conservation efforts in excess of the amounts outlined by this Project are not within the scope of this document and would require subsequent environmental analysis prior to implementation. A reduction in transfer volume would reduce impacts and is covered within the range of scenarios depicted in this Final EIR/EIS.

#### **Response to Comment G17-9**

The IID/SDCWA water transfer will not determine the blend of water (Colorado River, SWP water, or other water sources) that is delivered from MWD to SDCWA. The MWD/SDCWA Exchange Agreement does provide that the water delivered to SDCWA shall be at least as good as the water delivered by SDCWA to MWD, and may be of better quality,

at MWD's discretion. Regardless of whether the Exchange Agreement is in effect, the blend of water delivered by MWD to SDCWA is determined by the MWD Board of Directors. MWD maintains that it is not required to provide any particular blend of water to its member agencies, and in some past years SDCWA has received almost exclusively Colorado River water. The composition of the blend of water that MWD delivers to SDCWA, therefore, will not be determined by the IID/SDCWA water transfer, but instead by whatever, if any, blending policy MWD may have at a given time.



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**B. Project Description.**

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1. In order to be legally adequate, a project description must depict the project accurately, not minimize its environmental effects, and include reasonably foreseeable activities associated with the project. If the description is inadequate because it fails to discuss the complete project, the environmental analysis will reflect the same mistake. EIR project descriptions have often been rejected as inadequate because the court perceived that the EIR attempted to limit the scope of environmental review by narrowing the project description, thus minimizing the projects impacts and undercutting public review. It is obvious that Salton Sea restoration activities are inextricably connected with the proposed IID/SDCWA Water Transfer. However, these two elements, which constitute the whole of an action impacting the environment, are being treated as separate projects with separate EIR/EIS's and are being processed at different times. The failure to include these interrelated actions as part of a single project will result in both EIR/EIS's containing incomplete environmental analyses. See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Ca. 4<sup>th</sup> 713, 32 C.R. 2d 704 and 14 Cal. Code Regs. § 15378 (a). Please explain your rationale.

G17-11

2. A project description must include all relevant parts of a project, including, reasonably foreseeable future expansion or other activities that are part of the project. *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 C. 3d 376, 253 C.R. 426 and 14 Cal. Code Regs § 15126. The IID EIR/EIS contains no discussion of reasonably foreseeable future expansion or other activities that are part of the project and therefore violates the requirements of CEQA.

G17-12

3. A project description must state the objectives sought by the proposed project. The statement of objectives should include the underlying purpose of the project. The IID EIR/EIS, while describing the intended water transfers and HCP, fails to accurately describe any project objectives and the underlying purposes of the project.

**C. Description of Project's Environmental Setting.**

G17-13

1. An EIR must describe the environmental setting for a proposed project to establish the baseline the lead agency uses to determine whether project impacts are significant. A deficiency in the description of the environmental setting taints the impact analysis and mitigation findings and renders them legally inadequate as well. There are numerous instances throughout the IID EIR/EIS in which the description of the environmental setting as inadequate.

**Response to Comment G17-10**

Refer to the Master Response on *Other—Relationship Between the Proposed Project and the Salton Sea Restoration Project* in Section 3 of this Final EIR/EIS.

**Response to Comment G17-11**

The description of the Proposed Project in Chapter 2 of the Draft EIR/EIS includes all relevant parts of the Proposed Project. No additional components of the Project are reasonably foreseeable.

**Response to Comment G17-12**

The Project objectives and the underlying purpose and need for the Project are fully described in Chapter 1 of the Draft EIR/EIS.

**Response to Comment G17-13**

Comment noted.

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**Response to Comment G17-14**

Please refer to the Master Response on *Hydrology—Development of the Baseline* in Section 3 of this Final EIR/EIS.

**Response to Comment G17-15**

1. The commenter paraphrases the requirements of the state CEQA Guidelines. No response is required.

2. An attempt will be made in this response to reply to the commenter's statement regarding the EIR/EIS's adequacy (see below). However, it is difficult to provide a comprehensive response to comments that do not comment on a specific section or technical area within the EIR/EIS.

3. We believe the EIR/EIS represents a good faith effort to comply with CEQA's purpose and intent. The significance thresholds included in the Draft EIR/EIS were based on the CEQA Guideline's Environmental Checklist Form in Appendix G. Because NEPA does not require significance thresholds, no significance thresholds were included in the sections that are only required by NEPA.

4. As stated above, we believe the EIR/EIS represents a good faith effort to comply with CEQA's purpose and intent. Also refer to the Master Responses on *Biology—Timing of Implementation of Biological Mitigation Measures* and *Other—Relationship Between the Proposed Project, QSA, IA, IOP, and CVWD Groundwater Management Plan* in Section 3 of this Final EIR/EIS.

5. We believe the EIR/EIS is a good faith and reasonable effort to identify and assess the environmental impacts of the Project and feasible mitigation measures, based upon available information and assessment methods. Under CEQA, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors [Cal. Pub. Resources Code § 21061.1]. CEQA "does not demand what is not realistically possible, given the limitations of time, energy and funds" (*Concerned Citizens of South Central Los Angeles v. Los Angeles Unified School District* (1994) 24 Cal.App. 4th 826, 841). The final determination of feasibility must be made by the Lead Agencies after considering the Final EIR/EIS and other evidence in the record.

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Since the environmental setting is spread throughout the various environmental analysis sections, comments regarding this will be deferred to the section by section review.

G17-14

2. Of particular relevance, is the CEQA requirement that the physical environmental conditions at the time the notice of preparation is published will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. Although some deviation from this requirement is allowed, such deviation must be supported by substantial evidence in the record. A key factor in determining the extent of impacts and required mitigation in the IID EIR/EIS is the decision not to rely on the current conditions at the Salton Sea as the baseline, but rather to assume a potential future Salton Sea with a lower elevation, a higher salinity content, and a significantly reduced surface area. This decision, which is not supported by substantial evidence in the record, significantly understates the impacts of the proposed project and the required mitigation.

**D. Significant Environmental Effects.**

G17-15

1. Identification of a project's significant environmental effects is one of the primary purposes of an EIR and is necessary to properly include mitigation measures and appropriate project alternatives. A significant effect on the environment is defined as a substantial or potential substantial adverse change in the environment. Direct and indirect significant effects of the project must be identified and described in an EIR with consideration given to both short term and long term effects.

2. Chapter 3 of the IID EIR/EIS presents the existing environmental setting and analysis of impacts associated with the project, defines thresholds of significance, and describes mitigation measures for potentially significant environmental impacts. There are 16 separate resource areas addressed in Section 3 and most of these will be addressed in more detail below. However, prior to focusing on the specific resource areas, it is important to note the minimal standards which an EIR and/or EIS must meet in addressing environmental setting and significant environmental effects. Each of the standards described below has been violated throughout Chapter 3 of the IID EIR/EIS.

3. An EIR must identify and focus on the significant environmental effects of a proposed project. Since significance may vary with the setting, establishing inflexible definitions is not always possible. However, a lead agency has discretion to formulate standards of significance or thresholds of significance for use in an EIR as long as a reasonable basis exists for using those standards. Such standards should be based on scientific information and other



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Elston Grubaugh  
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evidence. Establishing appropriate thresholds of significance or standards of significance in an EIR is critical to the appropriate determination of significant impacts. If appropriate thresholds are understated or are not included, then many impacts that would otherwise be considered significant are not appropriately addressed in the EIR.

4. As noted above, the purpose of an EIR is to provide public agencies in the public with detailed information about the effect the project is likely to have on the environment, to list ways significant effects might be minimized, and to indicate alternatives to the project. An EIR must analyze all aspects of a project that are a reasonably foreseeable consequence of the project. The adequacy of an EIR's project description is closely linked to the adequacy of its analysis of significant environmental effects. Failure to include a significant component of the project in the EIR project description often results in a failure to analyze the impacts of that component. An EIR may include some degree of forecasting and evaluating a project's environmental impacts. However, deferring analysis of environmental impacts to studies to be conducted in the future is often a fatal flaw for an EIR. An EIR must contain facts and analysis, not just an agency's bare conclusions or opinions. Disagreements among experts do not render an EIR inadequate, but the EIR should summarize the main points of disagreement. A bare conclusion without an explanation of its factual and analytical basis is not a sufficient analysis of an environmental impact. Thus, if an EIR concludes that certain environmental impacts are not significant, the EIR should explain the basis for that conclusion.

5. An EIR must propose and describe mitigation measures to minimize the significant environmental effects identified in the EIR. A mitigation measure must be designed to minimize, reduce, or avoid an identified environmental impact or to rectify or compensate for that impact. The EIR must identify potential mitigation measures for each significant effect described in the EIR. If a mitigation measure would itself create significant environmental impacts, those effects must be discussed in the EIR. If several measures are available to mitigate a significant adverse impact, the EIR should discuss each measure and specify the reason for selecting a particular measure. All mitigation measures must be fully enforceable. An EIR must respond to specific suggestions for mitigating a significant impact unless the suggested mitigation is facially infeasible. An EIR must propose mitigation measures that are designed to minimize the project's significant impacts by substantially reducing or avoiding them. A court may find an EIR to be inadequate if suggested mitigation measures are so undefined that it is impossible to evaluate their effectiveness. See *Kings County Farm Bureau v. City of Hanford* (1990) 221 Ca. 3d 692, 270 C.R. 650.

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**Response to Comment G17-16**

Refer to the Master Response on *Other—Relationship Between the Proposed Project and the Salton Sea Restoration Project* in Section 3 of this Final EIR/EIS.

**Response to Comment G17-17**

Additional information regarding the development and use of the IIDSS model is attached to this Final EIR/EIS as Attachment I. Also see Appendix E of the Draft EIR/EIS. As described on page 1-5 of Appendix E of the Draft EIR/EIS, to validate the IIDSS and provide additional quality control, a Peer Review Team was assembled for review of the IIDSS and its documentation. A detailed presentation was made to this team on the development and operations of the IIDSS. This same Team reviewed several versions of the documentation and commented on the IIDSS concepts, structure, science, and logic. This Team found the IIDSS to be a valid representation of conditions at IID.

**Response to Comment G17-18**

Please refer to the Master Response on *Hydrology—Development of the Baseline* in Section 3 of this Final EIR/EIS.

**E. Hydrology and Water Quality.**

1. The IID EIR/EIS acknowledges the existence of the Salton Sea Reclamation Act of 1998 and its direction to the Secretary of Interior to perform numerous studies for the purpose of reducing and stabilizing the overall salinity of the Salton Sea, stabilizing the surface elevation of the Salton Sea, reclaiming, in the long term, healthy fish and wildlife resources and their habitats, and enhancing the potential for recreational uses and economic development of the Salton Sea. Obviously, the conclusion of these studies is relevant to the existing setting for the proposed project and is arguably part of the proposed project. However, a separate draft EIR/EIS for the proposed Salton Sea Restoration Project, which has been prepared, has still not been released for public review. Without the information in that document, the description of the existing setting for hydrology and water quality is inadequate.

2. In assessing the potential environmental impacts of the proposed project on hydrology and water quality, the IID EIR/EIS relies on complex computer simulations that are not adequately described within the IID EIR/EIS. Without a thorough review and analysis of the accuracy of these computer simulations, it is impossible to determine the accuracy of their conclusions. The IID EIR/EIS needs to be revised to include detailed information and analysis regarding the accuracy of the computer simulations used to determine impacts. Please provide the details regarding reliability of the computer simulations.

3. The Imperial Irrigation District Support System (IIDSS) is designed to predict annual water conservation volumes required by the IID/SDCWA Transfer Agreement and simulate the resulting changes in the quality and quantity of drainage water that flows in the drains and rivers. Again, the impact analysis in the IID EIR/EIS relies on computer simulation models that are not adequately described and analyzed in the IID EIR/EIS to determine their reliability and accuracy. Without substantial evidence in the record of the reliability and accuracy of the computer models utilized, the underlying analysis and conclusions are inadequate.

4. The Salton Sea Accounting Model, used to determine hydrology and water quality impacts on the Salton Sea from the proposed projects are unreliable for the reasons stated above and for faulty assumptions. These faulty assumptions include a change in the baseline relied upon to determine impacts. As indicated previously, in assessing impacts from the proposed project to the Salton Sea, the IID EIR/EIS relies on baseline conditions that do not



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**Response to Comment G17-19**

Chemical and biological activity influencing selenium concentrations in the Salton Sea are complex, and there remains considerable debate regarding how these processes affect the interchange between selenium in the water column and selenium sequestered in sediment and organic material on the Sea floor. In spite of this uncertainty, it seems that the reduced selenium loading to the Sea under the Proposed Project would be unlikely to result in an increase in selenium in the water column.

In addition, the current Mitigation Strategy for the Salton Sea will maintain Sea levels under the Proposed Project at elevations that are equal to or higher than those projected in the Project Baseline. One of the benefits of maintaining elevations at these levels is that the exposure of Sea-bottom sediments and organic matter to diffused oxygen under the Proposed Project will be no greater than under the Project Baseline. Therefore, selenium sequestered in sediment and organic matter in anaerobic conditions under the Project Baseline is likely to remain under the same conditions until at least 2030 under the Proposed Project.

With respect to TSS, because both the Project Baseline and the Proposed Project reduce tailwater discharge to IID drains, the Project Alternatives are expected to reduce TSS loadings to the drainage system and to the Sea relative to loadings observed historically. The Proposed Project results in the greatest reduction in TSS loading of any of the alternatives. The mitigation strategy proposed for the Salton Sea will introduce water to maintain Sea levels at or above Baseline elevations. Although the sources of mitigation water may vary, they will have lower TSS concentrations than the tailwater discharges they are replacing. Therefore, while modeling has not been performed to simulate TSS concentrations in the Salton Sea, there is no reason to believe that these concentrations would increase under the Proposed Project.

For additional information, please refer to the following Master Responses in Section 3 of this Final EIR/EIS: *Hydrology—Selenium Mitigation, Hydrology-Development of the Baseline, Biology—Timing of Implementation of Biological Mitigation Measures, and Hydrology—TMDLs.*

**Response to Comment G17-20**

G17-18

currently exist. The baseline assumes a future condition in which salt loads in the sea are considerably higher than at present, inflows of water to the sea are considerably lower than at present, and both sea elevations and sea surface area are considerably lower than at present. Such changes to the normal requirement that the baseline be the environment as it exists at the time of the NOP, is not supported by substantial evidence in the record and is therefore inadequate.

G17-19

5. The IID EIR/EIS notes that modeling methods for simulating future selenium concentrations in the Salton Sea are currently unavailable and therefore quantitative predictions regarding the impacts of selenium to water quality in the Salton Sea are not discussed in the IID EIR/EIS. In addition, the IID EIR/EIS notes that there is no specific water quality criteria for TSS in the Salton Sea and therefore do not provide an analysis of the impacts of increased TSS concentrations on the sea. It is simply not acceptable to say that certain potentially significant impacts cannot be addressed or analyzed in an EIR/EIS. The appropriate modeling needs to be completed and criteria of significance established prior to completing the public review process for the IID EIR/EIS. To do otherwise would allow agencies to avoid consideration of potentially significant impacts and costly mitigation requirements simply by not addressing the issues.

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6. The IID EIR/EIS indicates that specific water quality standards for TDS, TSS and selenium have not been established for the Salton Sea. However, in a footnote, it states that the Colorado River Basin Plan establishes a goal for reducing salinity concentrations in the sea from current levels to 35,000 milligrams per liter. The Basin Plan indicates that when salinity increases above 45,000 milligrams per liter TDS, it is questionable whether a viable fishery will continue to exist in the sea. Despite this relevant information and the obvious specifics that would allow for the establishment of a threshold of significance, the IID EIR/EIS ignores this information and find no significant impact from the proposed project despite the fact that this project will significantly increase TDS above the current level of 45,000 milligrams per liter. This is a clear violation of CEQA and makes the IID EIR/EIS inadequate.

G17-21

7. Most of the significance criteria rely on the term "substantial" but the IID EIR/EIS provides no definition for the word as it relates to the specific criteria. The purpose for significance criteria are to establish objective standards by which potentially significant impacts can be determined. Failure to adequately define the qualifying terms used to define the significance criteria completely eviscerates the purpose for establishing the criteria. Until appropriate definitions are established, reliance on the criteria is subjective and therefore inadequate.

The approach taken in the Draft EIR/EIS is to treat the salinity in the Salton Sea as a biological resource issue rather than a water quality issue. So, in fact, the Salton Sea salinity is one of the primary considerations in development of the HCP for mitigation of impacts of the Proposed Project or Alternatives on the biologic resources of the Sea. Therefore, please see the discussion of biological resources given in Section 3.2 of the Draft EIR/EIS. Also, please refer to the Master Responses on *Biology—Approach to the Salton Sea Habitat Conservation Strategy and Biology—Impact Determination for Fish in the Salton Sea* in Section 3 of this Final EIR/EIS.

#### **Response to Comment G17-21**

The criteria presented in the IID EIR/EIS are neither subjective nor inadequate. As noted in Section 1.1 of the Draft EIR/EIS, "[T]he Draft EIS/EIR was prepared in accordance with California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA)..." Therefore, the significance criteria provided in the Draft EIR/EIS and the definition or explanation of the use of specific terms such as "significant" and "substantial" are found in the applicable rules in NEPA and CEQA. For example, Section 15064 of the CEQA Guidelines clearly spells out the process for determining whether a project may have a significant effect on the environment. Specific language defining the process for determining significance is provided below:

- (b) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.
- (c) In determining whether an effect will be adverse or beneficial, the Lead Agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the Lead Agency. Before requiring the preparation of an EIR, the Lead Agency must still determine whether environmental change itself might be substantial.
- (d) In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project. (Title 14, CCR, Chapter 3, Article 5, Section 15064[b][c][d]).

Furthermore, Section 15064 incorporates statutory provisions which define "substantial evidence." Specifically, subsection (g), Public Resources Code section 21082.2 provides that the determination of significance shall be based upon substantial evidence in light of the whole record before the agency. This may include materials that are not part of the environmental document, but that are known to and have been considered by the agency. Public Resources Code section 21082.2 states that: "argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence." Substantial evidence is defined to include: "*facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.*" (Emphasis added.)